

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JOSEPH LELAND EVERIST	§	
VS.	§	CIVIL ACTION NO. 1:16-CV-212
UNITED STATES OF AMERICA	§	

MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE’S REPORT AND RECOMMENDATION

Movant, Joseph Leland Everist, proceeding *pro se*, filed this motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 based on the theory that *Johnson v. United States*, 135 S.Ct. 2251 (2015) applies to the career offender sentencing guidelines.

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends this motion to vacate, set aside, or correct sentence be denied as the Supreme Court determined in *Beckles v. United States* that *Johnson* does not apply to the sentencing guidelines. 2017 WL 855781 (Mar. 6, 2017).

Movant filed objections on April 24, 2017 (docket entry no. 20). After a review of the objections, the Magistrate Judge ordered the United States to file a supplemental response which was filed on July 20, 2017 (docket entry nos. 21 & 22). A review of the underlying criminal docket revealed that the BOP notified the Court that movant passed away on October 9, 2017. 1:00-CR-67 (docket entry no. 87).

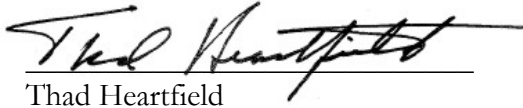
Federal courts are said to be courts of “limited jurisdiction.” *See County Court of Ulster County, N.Y. v. Allen*, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979). Under Article III, Section 2 of the Constitution, the judicial power of the United States Government extends only to “Cases” or “Controversies.” The “case or controversy” requirement demands, *inter alia*, that a cause of action before a federal court present a “justiciable” controversy. “[N]o justiciable controversy is presented . . . when the question sought to be adjudicated has been mooted by subsequent

developments.” *Flast v. Cohen*, 392 U.S. 83, 95, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968). Due to movant’s death, the requested relief is no longer possible and the motion to vacate, set aside or correct sentence is moot.

ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **PARTIALLY ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge’s recommendations.

SIGNED this the **15** day of **November, 2017**.


Thad Heartfield
United States District Judge